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**Golden Mango Corporation and Local 342-50, United Food and Commercial Workers, AFL-CIO.**  
Cases 29-CA-24219, 29-CA-24247, and 29-CA-24336

December 14, 2001

**DECISION AND ORDER**

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND WALSH

On charges and an amended charge filed by the Union on April 30, May 15, and July 12, 2001, the General Counsel of the National Labor Relations Board issued a consolidated complaint on July 18, 2001, against Golden Mango Corporation, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On October 10, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On October 12, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 6, 2001, notified the Respondent that unless an answer were received by September 12, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a domestic corporation, with an office and place of business at 81-05 Rockaway Boulevard, Ozone Park, New York, has been engaged in the operation of a supermarket at that location (the Ozone Park facility). During the 12-month period

preceding issuance of the consolidated complaint, in the course and conduct of its business operations, the Respondent derived gross revenues in excess of \$500,000, and has purchased and received at its Ozone Park facility goods, products and materials valued in excess of \$5000 directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals have been agents of the Respondent, acting on its behalf:

|               |          |
|---------------|----------|
| Mr. (FNU) Kim | Co-Owner |
| Nancy Kim     | Co-Owner |

At all material times, the following individuals have held the positions set forth opposite their respective names, and have been agents of the Respondent, acting on its behalf, and supervisors within the meaning of Section 2(11) of the Act:

|                  |               |
|------------------|---------------|
| Alfredo DiFilipo | Store Manager |
| Mr. Bruce (LNU)  | Store Manager |

On or about January 18, 2001, the Union commenced a campaign to organize a unit of the Respondent's meat department employees employed at its Ozone Park facility. On April 12, 2001, an election was held in that unit, and on April 26, 2001, the Region issued a certification of the Union as the exclusive collective-bargaining representative of the unit employees.

On or about January 18, 2001, the Respondent, by Mr. Kim and Alfredo DiFilipo, at its Ozone Park facility:

(a) interrogated employees as to why they had signed authorization cards for the Union; and

(b) directed employees that they should inform the Union that they no longer wished to be represented by it.

On or about January 19, 2001, the Respondent, by Alfredo DiFilipo, at its Ozone Park facility:

(a) warned and directed employees not to sign authorization cards on behalf of the Union;

(b) interrogated employees as to whether they had signed authorization cards on behalf of the Union;

(c) threatened employees with a reduction in their work hours if they signed authorization cards for the Union or gave support or assistance to it or engaged in other protected concerted activities; and

(d) threatened employees with discharge, plant closure, layoff, and a reduction in hours because they gave support or assistance to the Union, or engaged in other protected concerted activities.

On or about January 19, 2001, the Respondent, by Mr. Bruce (LNU), at its Ozone Park facility, threatened employees with discharge and deportation if they gave assistance or support to the Union or engaged in other protected concerted activities.

On or about January 19, 2001, the Respondent, by Alfredo DiFilipo, at its Ozone Park facility, directed employees not to sign authorization cards for the Union and threatened them with discharge should they do so.

On or about January 21, 2001, the Respondent, by Alfredo DiFilipo, at its Ozone Park facility, threatened to reduce the working hours of its employees because of their membership in, sympathy for, and activities on behalf of the Union and because they engaged in other protected concerted activities.

On a date presently unknown in late February 2001, the Respondent, by Alfredo DiFilipo and Mr. Bruce (LNU), at its Ozone Park facility, threatened its employees with a reduction in their work hours because of their membership in, sympathy for, and activities on behalf of the Union and because they engaged in other protected concerted activities.

On or about April 11, 2001, the Respondent, by either Mr. Kim or Nancy Kim and Alfredo DiFilipo, at its Ozone Park facility:

(a) directed its employees to vote no in the election held on April 12, 2001; and

(b) threatened employees that if the Union were successful in the election, the benefits of certain meat department employees would be reduced.

On several occasions in March and April 2001, the dates of which are presently unknown, the Respondent, by Alfredo DiFilipo, at its Ozone Park facility, informed its employees that the reason they could no longer converse at their work stations was due to their membership in, sympathy for, and activities on behalf of the Union, and because they engaged in other protected concerted activities.

On or about April 11, 2001, the Respondent, by Mr. Kim, at its Ozone Park facility, promised employees that the Respondent would assist them in the payment of certain medical expenses if they voted against the Union in the election.

On or about April 11, 2001, the Respondent, by Nancy Kim, Bruce (LNU), and Alfredo DiFilipo, at its Ozone Park facility, threatened employees that their work hours would be further reduced if they voted for the Union in the election and because of their membership in, sympathy for, and activities on behalf of the Union and because they engaged in other protected concerted activities.

On or about February 26 or March 1, 2001, and on various dates unknown thereafter, the Respondent reduced the working hours of the following meat department employees:

Jose Aviles  
Alexander Campis  
Catalina Coronado  
Rosa Flores  
Thackur Neebar  
Mihanel Pabon

Raul Villalta

On or about March 1, 2001, the Respondent eliminated the use of radios at the work stations for meat department employee Mihanel Pabon and another meat department employee whose name is presently unknown.

On about March 1, 2001, the Respondent directed meat department employees to discontinue their practice of speaking to one another at their work stations.

On or about April 12, 2001, the Respondent eliminated the benefit of providing a free lunch on Sunday to the following meat department employees:

Jose Aviles  
Alexander Campis  
Catalina Coronado  
Rosa Flores  
Thackur Neebar  
Mihanel Pabon  
Raul Villalta

Since on or about April 27, 2001, the Respondent assigned the more onerous and less desirable job of cleaning the bathrooms at its Ozone Park facility to meat department employees Rosa Flores, Raul Villalta and Mihanel Pabon. The Respondent engaged in this conduct because these employees joined and assisted the Union and engaged in other protected concerted activities and to discourage employees from engaging in these activities.

Since on or about May 31, 2001, the Respondent further reduced the working hours of its employee, Mihanel Pabon. The Respondent engaged in this conduct because Pabon was named in a charge filed under the Act.

#### CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

By reducing employees' working hours, eliminating the use of radios at employees' work stations, directing employees to discontinue speaking to one another at their work stations, eliminating the benefit of a free lunch on Sundays, and assigning more onerous jobs to employees because of their protected concerted activities, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

By further reducing the working hours of employee Mihanel Pabon because he was named in a charge filed under the Act, the Respondent has further been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

The unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (3) by the reduction of working hours and the elimination of a free Sunday lunch for meat department employees Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta, and has also violated Section 8(a)(4) by further reducing the work hours of meat department employee Mihanel Pabon, we shall order the Respondent to make those employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd, 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any reference to the actions taken against Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta, and to notify them in writing that this has been done.

Further, the Respondent shall be required to rescind the changes made in working conditions with respect to (1) the reduction of working hours of meat department employees Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta; (2) the elimination of the use of radios at work stations for meat department employee Mihanel Pabon and another meat department employee whose name is presently unknown; (3) the discontinuation of the meat department employees' practice of speaking to one another at their work stations; (4) the elimination of free lunch on Sundays for the following meat department employees: Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta; and (5) the assignment of the job of cleaning the bathrooms at the Ozone Park facility to meat department employees Rosa Flores, Raul Villalta and Mihanel Pabon.

#### ORDER

The National Labor Relations Board orders that the Respondent, Golden Mango Corporation, Ozone Park, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees as to why or whether they signed authorization cards for the Union.

(b) Directing employees that they should inform the Union that they no longer wish to be represented by it.

(c) Warning and directing employees not to sign authorization cards on behalf of the Union.

(d) Threatening employees with a reduction in their work hours if they sign authorization cards for the Union, give support or assistance to it, or engage in other protected concerted activity, or because of their membership in, sympathy for, and activities on behalf of the Union.

(e) Threatening employees with discharge, plant closure, or layoff because they give support or assistance to the Union, or engage in other protected concerted activities.

(f) Threatening employees with discharge and deportation if they give assistance or support to the Union or engage in other protected concerted activities.

(g) Directing its employees not to sign authorization cards for the Union and threatening them with discharge if they do so.

(h) Directing employees to vote no in a union election.

(i) Threatening employees that if the Union were successful in the election, the benefits of employees would be reduced.

(j) Informing employees that the reason they could no longer converse at their work stations was due to their membership in, sympathy for, or activities on behalf of the Union, and because they engaged in other protected concerted activities.

(k) Promising employees that the Respondent would assist them in the payment of certain medical expenses if they voted against the Union in the election.

(l) Threatening employees that their work hours would be further reduced if they voted for the Union in the election, and because of their membership in, sympathy for, and activities on behalf of the Union and because they engaged in other protected concerted activities.

(m) Reducing the working hours of meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

(n) Eliminating the use of radios at the work stations of meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

(o) Directing meat department employees to discontinue their practice of speaking to one another at their work stations because of their membership in, sympathy for, and activities on behalf of the Union.

(p) Eliminating the benefit of providing a free lunch on Sunday to meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

(q) Assigning the more onerous and less desirable job of cleaning the bathrooms at its Ozone Park facility to meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

(r) Further reducing the working hours of employees because they are named in a charge filed under the Act.

(s) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make employees Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta whole for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against them, with interest, as set forth in the remedy section of this decision.

(b) Rescind the changes made in working conditions with respect to (1) the reduction of working hours of meat department employees Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta; (2) the elimination of the use of radios at work stations for meat department employee Mihanel Pabon and another meat department employee whose name is presently unknown; (3) the discontinuation of the meat department employees' practice of speaking to one another at their work stations; (4) the elimination of free lunch on Sundays for the following meat department employees: Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta; and (5) the assignment of the job of cleaning the bathrooms at the Ozone Park facility to meat department employees Rosa Flores, Raul Villalta, and Mihanel Pabon.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful actions taken against Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta, and within 3 days thereafter notify the employees in writing that this has been done and that its unlawful actions will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Ozone Park, New York, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized

representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 18, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 14, 2001

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| Peter J. Hurtgen, | Chairman |
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| Wilma B. Liebman, | Member |
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| Dennis P. Walsh, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees as to why or whether they signed authorization cards for the Union.

WE WILL NOT direct employees that they should inform the Union that they no longer wish to be represented by it.

WE WILL NOT warn and direct employees not to sign authorization cards on behalf of the Union.

WE WILL NOT threaten employees with a reduction in their work hours if they sign authorization cards for the Union, give support or assistance to it, or engage in other protected concerted activity, or because of their membership in, sympathy for, and activities on behalf of the Union.

WE WILL NOT threaten employees with discharge, plant closure, or layoff because they give support or assistance

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "posted by order of the national labor relations board" shall read "posted pursuant to a judgment of the united states court of appeals enforcing an order of the national labor relations board."

to the Union, or engage in other protected concerted activities.

WE WILL NOT threaten employees with discharge or deportation if they give assistance or support to the Union or engage in other protected concerted activities.

WE WILL NOT direct our employees not to sign authorization cards for the Union and threaten them with discharge if they do so.

WE WILL NOT direct our employees to vote no in a union election.

WE WILL NOT threaten employees that if the Union is successful in an election, the benefits of employees will be reduced.

WE WILL NOT inform our employees the reason they can no longer converse at their work stations is due to their membership in, sympathy for, or activities on behalf of the Union or because they engage in other protected concerted activities.

WE WILL NOT promise employees that we will assist them in the payment of certain medical expenses if they vote against the Union in an election.

WE WILL NOT threaten our employees that their work hours will be further reduced if they vote for the Union in an election, and because of their membership in, sympathy for, and activities on behalf of the Union and because they engage in other protected concerted activities.

WE WILL NOT reduce the working hours of meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

WE WILL NOT eliminate the use of radios at the work stations of meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

WE WILL NOT direct meat department employees to discontinue their practice of speaking to one another at their work stations because of their membership in, sympathy for, and activities on behalf of the Union.

WE WILL NOT eliminate the benefit of providing a free lunch on Sunday to the meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

WE WILL NOT assign the more onerous and less desirable job of cleaning the bathrooms at our Ozone Park facility to meat department employees because of their membership in, sympathy for, and activities on behalf of the Union.

WE WILL NOT further reduce the working hours of an employee because he was named in a charge filed under the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make employees Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL rescind the changes made in working conditions with respect to (1) the reduction of working hours of employees Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta; (2) the elimination of the use of radios at work stations for employee Mihanel Pabon and another employee whose name is presently unknown; (3) the discontinuation of employees' practice of speaking to one another at their work stations; (4) the elimination of free lunch on Sundays for the following employees: Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta; and (5) the assignment of the job of cleaning the bathrooms at our Ozone Park facility to employees Rosa Flores, Raul Villalta and Mihanel Pabon.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to our unlawful discrimination against Jose Aviles, Alexander Campis, Catalina Coronado, Rosa Flores, Thackur Neebar, Mihanel Pabon, and Raul Villalta, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful actions will not be used against them in any way.

GOLDEN MANGO CORPORATION